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SERVICE DATE - JUNE 15, 2001

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-579X

COUNTY OF COAHOMA, MISSISSIPPI—ABANDONMENT EXEMPTION—  
IN TALLAHATCHIE AND COAHOMA COUNTIES, MS.

STB Docket No. AB-580X

GULF & OHIO RAILWAYS, INC., D/B/A MISSISSIPPI DELTA RAILROAD—  
DISCONTINUANCE OF SERVICE EXEMPTION—  
IN TALLAHATCHIE AND COAHOMA COUNTIES, MS.

Decided: June 12, 2001

On February 26, 2001, the County of Coahoma, Mississippi (County) and the Gulf and Ohio Railways, Inc. d/b/a/ Mississippi Delta Railroad (MSDR) (jointly, petitioners) jointly filed a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903-05. The County proposes to abandon its 51.06-mile rail line consisting of two segments: (1) the 18.6-mile Lula Segment between milepost 55.40 near Lula and milepost 74.00 near Lyon, MS; and (2) the 32.46-mile Swan Lake Segment between milepost 74.00 near Lyon and milepost 79.00 near Clarksdale, MS, and between milepost 76.54 near Clarksdale and milepost 104.00 at Swan Lake. The County also proposes to discontinue incidental overhead trackage rights over 1.39 miles of an Illinois Central Railroad Company (IC) rail line near Swan Lake between milepost 104.00 and the connection with IC's main line at milepost 105.39. MSDR proposes to discontinue service and its lease and trackage rights operations over the above-described rail lines. Petitioners also seek exemption from the offer of financial assistance (OFA) procedures of 49 U.S.C. 10904 and the public use provisions of 49 U.S.C. 10905.

Pursuant to 49 U.S.C. 10502(b), the Board served and published a notice in the Federal Register (66 FR 15324) on March 16, 2001, instituting an exemption proceeding. We will grant the requested exemptions.

## BACKGROUND

The County became a Class III rail carrier when it acquired the Swan Lake Segment and trackage rights from IC,<sup>1</sup> and shortly thereafter it acquired the Lula Segment from MSDR.<sup>2</sup> MSDR, a Class III rail carrier, currently operates these lines under an interim lease from the County.<sup>3</sup> MSDR had purchased the Lula Segment and leased the Swan Lake Segment from IC in 1985.<sup>4</sup> MSDR's operation of the lines represents its entire railroad operations.<sup>5</sup>

Petitioners assert that continued operation of the lines is no longer economically viable. According to petitioners, most of the traffic on the lines had been generated by Archer Daniels Midland Company (ADM) and Delta Oil Mill (Delta Oil). However, ADM relocated its plant to another state, and Delta Oil is currently using motor carrier service. Other shippers have continued using the line to transport various commodities, but freight traffic has reportedly declined from 3,273 carloads in 1997, to 1,709 carloads in 1998, to 591 carloads in 1999, and to 296 carloads in 2000. Annual freight revenue reportedly declined from \$478,298 in 1998, to

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<sup>1</sup> See County of Coahoma, Mississippi–Acquisition Exemption–Line of Illinois Central Railroad Company, STB Finance Docket No. 33953 (STB served Dec. 7, 2000).

<sup>2</sup> See County of Coahoma, Mississippi–Acquisition Exemption–Line of Gulf & Ohio Railways, Inc., d/b/a Mississippi Delta Railroad, STB Finance Docket No. 33977 (STB served Jan. 4, 2001).

<sup>3</sup> See Gulf & Ohio Railways, Inc., d/b/a Mississippi Delta Railroad–Lease and Operation Exemption– Lines of County of Coahoma, Mississippi, STB Finance Docket No. 33975 (STB served Jan. 4, 2001). The decision noted that MSDR had agreed to operate the rail lines through June 30, 2001, in order to provide the County time to locate a long-term operator.

<sup>4</sup> See Gulf & Ohio Railways, Inc.–Exemption from 49 U.S.C. 11301, 10901, and 11322, Finance Docket No. 30683 (ICC served Nov. 6, 1985).

<sup>5</sup> According to the petition, MSDR is the trade name of Gulf & Ohio Railways, Inc. (GOI), which had operated an additional railroad property under the trade name, Atlantic & Gulf Railroad, in a different state. However, GOI sold that other property in 1999. See Georgia & Florida Railnet, Inc.–Acquisition and Operation Exemption–Lines of Gulf & Ohio Railways, Inc., STB Finance Docket No. 33716 (STB served May 13, 1999). GOI is a wholly owned subsidiary of Gulf & Ohio Railways Holding Company, Inc. (G&O Holding). In addition to MSDR, G&O Holding controls six other Class III rail carriers operating in the southeastern United States. See Gulf & Ohio Railways Holding Co., Inc.–Continuance in Control Exemption–Laurinburg & Southern Railroad Co., Inc., STB Finance Docket No. 33641 (STB served Aug. 19, 1998).

\$167,495 in 1999, and to \$71,069 in 2000. Petitioners claim that freight revenues generated by the lines no longer sustain MSDR's maintenance and operating costs.

Petitioners indicate that the County acquired the lines and incidental trackage rights<sup>6</sup> to avoid losing rail service, and that MSDR agreed to continue providing interim service through June 30, 2001, giving the County time to locate a replacement operator. Petitioners indicate that MSDR's experience has shown that the line currently cannot support full common carrier operations. Also, the County has allegedly not been able to attract an operator who is willing to provide traditional regulated rail service on the line. The County expresses its current belief that the line would attract an innovative operator who would perform non-common carrier, contract service that, in its view, would not be subject to entry or exit regulatory barriers.

Petitioners have submitted letters supporting the proposed abandonment and discontinuance from all of the shippers that have used rail service within the past 12 months.<sup>7</sup>

## DISCUSSION AND CONCLUSIONS

Abandonment and discontinuance exemption. Under 49 U.S.C. 10903, a rail line may not be abandoned or service discontinued without our prior approval. Under 49 U.S.C. 10502, however, we must exempt a transaction or service from regulation when we find that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from an abuse of market power.

Detailed scrutiny under 49 U.S.C. 10903 is not necessary here to carry out the rail transportation policy. By minimizing the administrative expense of the application process, an exemption will reduce regulatory barriers to exit [49 U.S.C. 10101(7)]. An exemption will also foster sound economic conditions and encourage efficient management by relieving the County and MSDR of the cost of operating and maintaining the lines. [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy will not be affected adversely. Further, the

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<sup>6</sup> Petitioners indicate that the IC granted the County incidental overhead trackage rights over the 1.39-mile segment so it could interchange traffic with IC near Swan Lake. These trackage rights were then assigned to MSDR. However, MSDR had previously acquired a lease right to operate over the 1.39-mile segment when it leased the Swan Lake Line in 1985. Accordingly, MSDR is seeking discontinuance authority for both its trackage rights and its lease operating rights over the 1.39-mile segment.

<sup>7</sup> Letters supporting the proposal were submitted from North Delta Compress & Warehouse Company, The Cooper Tire Company, Graeber Bros., Inc., Colonial Bag Company, and Martin Bros Scrap Metal. The Board has also received a Resolution of the Transportation Committee of the Mississippi House of Representatives supporting the proposal.

proposed exemption will enable the County to go forward with its proposal for continued operation of the lines.

Nor is regulation of the proposed transaction necessary to protect shippers from an abuse of market power. All of the shippers on the line support the abandonment and agree with the County's efforts to provide and preserve rail service on the lines. In light of our market power finding, we need not determine whether the proposed abandonment is limited in scope.

Other exemptions. Petitioners request that the Board exempt the proposed transactions from the OFA procedures in 49 U.S.C. 10904 and the public use requirements in 49 U.S.C. 10905. Petitioners indicate that following abandonment and discontinuance, the County intends to retain the track and bridges of the line in place and pursue arrangements with a new operator to provide non-regulated rail service. Petitioners claim that imposing a public use condition or a forced OFA sale would unnecessarily delay the County's efforts to find long-term operating solutions for the line and would undermine the innovative public/private cooperative efforts that have been made by the County, MSDR and the active shippers on the lines.

We will grant petitioners' requests for exemptions from the requirements of sections 10904 and 10905. The abandonment petition and the requests for exemption from the OFA process and the public use process have been noticed in the Federal Register. No requests for an OFA or a public use condition and no objections to the proposed exemptions from sections 10904 and 10905 have been received. Denying the petitioners' request would serve no useful purpose and would delay the County's proposal for continued rail service to shippers served by the lines. Accordingly, we will exempt the proposed abandonment from the OFA and public use requirements of 49 U.S.C. 10904-05.

The evidence of record establishes that the proposed exemptions from 49 U.S.C. 10904-05 meet the criteria of 49 U.S.C. 10502. Applying the OFA or public use requirements in this instance is not necessary to carry out the rail transportation policy. Moreover, allowing the abandonment exemption to become effective without first being subject to these requirements, will minimize the need for Federal regulatory control over the rail system, expedite regulatory decisions, and reduce regulatory barriers to exit [49 U.S.C. 10101(2) and (7)]. We have already determined that regulation is not necessary to protect shippers from an abuse of market power.

Labor protection. Under 49 U.S.C. 10502(g), we may not use our exemption authority to relieve a carrier of its statutory obligation to protect the interests of its employees. However, we do not normally impose employee protective conditions when a carrier abandons its entire line unless the evidence shows the existence of: (1) a corporate affiliate that will continue substantially similar rail operations; or (2) a corporate parent that will realize substantial financial benefits over and above relief from the burden of deficit operations by its subsidiary railroad. See Wellsville, Addison & Galetton R. Corp.—Abandonment, 354 I.C.C. 744 (1978); Northampton and Bath R. Co.—Abandonment, 354 I.C.C. 784 (1978) (Northampton). Apparently, the County is abandoning its only rail lines, and it has no employees who will be

adversely affected by the proposed abandonment. MSDR proposes to discontinue its entire rail operations. MSDR does not appear to have a corporate affiliate or parent that could benefit from the proposed abandonment, and no one has attempted to show that the situation under Northampton exists for imposing labor protection in this proceeding.<sup>8</sup> Accordingly, we will not impose labor protective conditions.

Environmental matters. Petitioners have submitted an environmental report with their petition and have notified the appropriate Federal, state, and local agencies of the opportunity to submit information concerning the energy and environmental impacts of the proposed action. See 49 CFR 1105.11. Our Section of Environmental Analysis (SEA) has examined the environmental report, verified the data it contains, analyzed the probable effects of the proposed action on the quality of the human environment, and served an environmental assessment (EA) on April 27, 2001. In the EA, SEA recommends that no environmental conditions be imposed. No comments to the EA have been filed by the May 25, 2001 due date. Based on SEA's recommendations, we conclude that the proposed abandonment, if implemented, will not significantly affect either the quality of the human environment or the conservation of energy resources.

Other matters. Having determined to exempt the abandonment from 49 U.S.C. 10904-05, we have eliminated the need to delay the effective date of the abandonment exemption to consider OFAs under Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987), and requests for public use conditions under 49 CFR 1152.28(a)(2). We will also not provide an opportunity for interested persons to file trail use/rail banking requests. Under section 8(d) of the National Trails System Act, 16 U.S.C. 1247(d), trail use/rail banking is voluntary and can only be implemented if an abandoning railroad agrees to negotiate an agreement. Here, the petitioners have made it clear that they will not entertain trail use requests.

Finally, we will also grant petitioners' request that the exemption be effective by June 30, 2001 to coincide with the date MSDR proposes to discontinue service under its interim lease with the County. The record supports granting this request. Accordingly, we will make the subject exemption effective on June 30, 2001.

It is ordered:

1. Under 49 U.S.C. 10502, we exempt from the requirements of 49 U.S.C. 10903-05 the abandonment and discontinuance of the above-described lines.

2. This exemption will be effective June 30, 2001. Petitions to stay must be filed by June 25, 2001, and petitions to reopen must be filed by July 5, 2001.

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<sup>8</sup> According to petitioners, GOI will continue to exist until it is dissolved, although it does not perform any rail operations or have any employees.

3. Pursuant to the provisions of 49 CFR 1152.29(e)(2), the County shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by the County's filing of a notice of consummation by June 15, 2002, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire. If a legal or regulatory barrier to consummation exists at the end of the 1-year period, the notice of consummation must be filed not later than 60 days after satisfaction, expiration, or removal of the legal or regulatory barrier.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams  
Secretary